

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

February 4, 2002

**IN RE:**

**PETITION OF CHATTANOOGA GAS COMPANY  
FOR APPROVAL OF AN EXPERIMENTAL FIXED  
RATE TARIFF**

**DOCKET NO.  
01-00761**

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**ORDER ACCEPTING WITHDRAWAL OF PETITION**

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On August 31, 2001, Chattanooga Gas Company ("Chattanooga" or "CGC") filed a *Petition for Approval of a Tariff Establishing Fixed Rate PGA Rider* ("Chattanooga's Petition"). This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on October 9, 2001 upon the *Withdrawal of Petition for Approval of Tariff Establishing Experimental Fixed Rate PGA Rider* (the "Withdrawal") filed by Chattanooga on September 27, 2001.

**Chattanooga's Petition**

In its *Petition*, Chattanooga requested Authority approval of a tariff establishing an experimental three (3) year period during which, rather than pass through its actual costs of supplying gas to its customers, Chattanooga proposed to freeze its customers' rates for three (3) successive twelve (12) month periods. For this purpose, Chattanooga proposed to enter into a contract with its gas trading affiliate, Sequent Energy Management, L.P. ("Sequent"), for a twelve (12) month supply of gas at a fixed rate for each of the three (3) successive twelve (12) month periods. As stated in *Chattanooga's Petition*, the proposed tariff would involve a waiver

of the Authority Purchased Gas Adjustment ("PGA") Rules.<sup>1</sup> Chattanooga explained that the proposed fixed rate tariff ("FRT") was a response to "the financial hardships faced by residential and small commercial customers due to the volatility in natural gas wholesale prices during the past winter heating season."<sup>2</sup> Chattanooga explained that it would "assume certain risks as a result of entering into a long term contract."<sup>3</sup> Chattanooga further stated that "to compensate for such risks, the FRT includes a 'risk premium.'"<sup>4</sup>

The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter (the "Consumer Advocate") filed a *Petition to Intervene* on September 14, 2001.

As a basis for its request to intervene in this matter, the Consumer Advocate stated as follows:

2. In the present docket, CGC seeks approval by the Tennessee Regulatory Authority ("TRA") of the FRT and in conjunction the ability to charge an insurance premium of approximately twenty (20) percent in return for a fixed price that consumers will be charged for twelve (12) month periods over a three (3) year term.

3. The FRT represents a substantial departure from the traditional rate mechanism wherein consumers are only asked to pay rates based upon the actual cost of CGC.

4. The FRT over time will result in higher gas cost to consumers than the actual costs borne by CGC.

5. All of the savings under this proposal relative to the excess of the fixed rate over actual gas costs will be kept by Sequent Energy Management, the gas purchasing affiliate of CGC.

6. The Attorney General believes that the FRT is not in the best interest of ratepayers and therefore, CGC should continue the past practice of setting rates based upon its actual costs effectively passing any savings through to the ratepayer.<sup>5</sup>

On September 24, 2001, Dynegy, Inc. ("Dynegy") filed a *Petition to Intervene*. Dynegy stated that it is "one of the leading energy merchants in the United States" and "markets natural gas, natural gas liquids and electricity to customers throughout the U.S., including customers in

<sup>1</sup> Tennessee Regulatory Authority Rules Chapter 1220-4-7.

<sup>2</sup> *Chattanooga's Petition*, August 31, 2001, p. 3.

<sup>3</sup> *Id.*, p. 4.

<sup>4</sup> *Id.*, p. 5.

<sup>5</sup> *Attorney General's Petition to Intervene*, September 14, 2001, pp. 1-2.

Tennessee and other nearby states.”<sup>6</sup> Dynegy further stated that it has “substantial and vital interests in the outcome of the Authority’s action in this docket and desires to intervene in order to protect those interests.”<sup>7</sup> Dynegy stated that it is a potential competitor of Sequent, Chattanooga’s affiliate which will provide gas to Chattanooga as part of its proposed Fixed Rate PGA Rider. Dynegy raised concerns about Chattanooga’s proposal, specifically questioning “whether Chattanooga’s proposed ‘Risk Premium’ component reflects the proper balance between revenues the risk premium will produce for Chattanooga and Sequent and the risks that are being assumed by the affiliated companies.”<sup>8</sup>

#### **Consideration of this Matter at the September 25, 2001 Authority Conference**

This matter came before the Directors of the Authority at the September 25, 2001 Authority Conference. Counsel for Chattanooga stated that Chattanooga did not oppose the Consumer Advocate’s *Petition to Intervene* but did oppose Dynegy’s *Petition to Intervene*.<sup>9</sup> Counsel stated that Chattanooga had filed a response to Dynegy’s Petition that morning, having only received notice of Dynegy’s *Petition to Intervene* on September 24, 2001.<sup>10</sup> Counsel further asserted that Dynegy has no interest in this proceeding because Dynegy is not a customer of Chattanooga, nor does Dynegy do business with Chattanooga or serve in the State of Tennessee.<sup>11</sup> Counsel for Chattanooga argued that one motivation for Dynegy’s request to intervene may be retaliation for an unrelated lawsuit filed by an affiliate of Chattanooga.<sup>12</sup> The Directors questioned Chattanooga’s counsel as to whether intervention by Dynegy would have

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<sup>6</sup> *Petition to Intervene of Dynegy Inc.*, September 24, 2001, p. 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, p. 4.

<sup>9</sup> Transcript of Authority Conference, September 25, 2001, p. 35.

<sup>10</sup> *Response in Opposition to the Petition for Intervention of Dynegy, Inc.*, September 25, 2001. Chattanooga’s *Response* states that “the only interest cited by Dynegy is a business interest, not a legal interest” and that “[i]t would be unjust to Chattanooga Gas and its rate payers to thwart Chattanooga Gas’ efforts to have this experimental tariff considered in a time frame where, if approved, it would have the greatest benefit for rate payers.” *Id.*, p. 2.

<sup>11</sup> Transcript of Authority Conference, September 25, 2001, p. 36.

<sup>12</sup> *Id.*

the potential of bringing information to the Authority's attention that would otherwise have remained unavailable, such as a showing that better prices than those proposed by Chattanooga were available. Counsel for Chattanooga replied that such information could be obtained and presented by the Consumer Advocate.

Following these comments, the Directors voted unanimously to convene a contested case proceeding in this matter, grant the Consumer Advocate's *Petition to Intervene* and Dynegy's *Petition to Intervene*, and approve Dynegy's *Petition for Admission to Plead and Practice Pro Hac Vice*. The Directors also voted unanimously to appoint the Authority's General Counsel or his designee to act as Pre-Hearing Officer to hear preliminary matters prior to the Hearing and set a procedural schedule to completion. Finally, the Directors voted unanimously to suspend Chattanooga's tariff for forty-five (45) days.

Following the Authority Conference, on September 25, 2001, a Status Conference was conducted by Pre-Hearing Officer Lynn Questell. The following parties were in attendance:

Chattanooga Gas Company – **D. Billye Sanders, Esq., Kristen Coile, Esq.**; 511 Union St., Suite 2100, Nashville, TN 37219; **Larry Buie**, 6125 Preservation Drive, Chattanooga, TN 37416; **Archie Hickerson**; P. O. Box 4569, Atlanta, GA 30302

Consumer Advocate and Protection Division, Office of the Attorney General – **Timothy C. Phillips, Esq., Chris C. Allen, Esq., Terry Buckner, Mark Crocker, Mike Chrysler, Steve Brown**; 425 Fifth Avenue North, Nashville, TN 37243

Dynegy, Inc. – **Robert J. Middleton, Esq.**; 320 Residence Avenue, Atlanta, GA 31702 (by telephone)

Sequent Energy Management, LP – **Hal Novak, Brian Toole**; 1219 Caroline Street, NE, Atlanta, GA 30307

On September 26, 2001, the Pre-Hearing Officer issued a *Notice of Procedural Schedule* setting forth a schedule for discovery requests and the filing of testimony, arrived at with the agreement of the parties at the September 25, 2001 Status Conference.

### **Chattanooga's Withdrawal**

Chattanooga filed its *Withdrawal* on September 27, 2001. In its *Withdrawal*, Chattanooga states that its *Petition* was "filed in response to concerns raised by Chattanooga Gas' customers and the TRA regarding the volatility in gas cost experienced during the winter of 2000/2001." According to Chattanooga, the *Petition* "was an attempt by Chattanooga Gas to develop a creative win/win response that would guarantee a flat rate for residential and commercial customers."<sup>13</sup> Nevertheless, Chattanooga expresses concerns about "the motives of Dynegy Inc. ('Dynegy') for participating in this docket."<sup>14</sup> Chattanooga further states that by its own determination a decision by the Authority would not be possible within the time frame requested by Chattanooga.

The Authority unanimously accepted Chattanooga's *Withdrawal* at the October 9, 2001 Authority Conference. The Directors stated that Chattanooga's responsibility to take all reasonable and prudent measures to purchase gas at the lowest possible price is not lessened by its withdrawal of the *Petition* and such measures are already possible under the Authority's PGA Rules.

### **IT IS THEREFORE ORDERED THAT:**

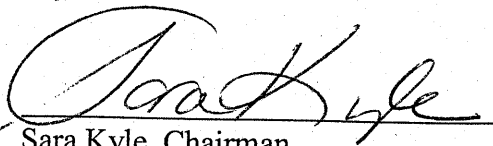
Chattanooga Gas Company's withdrawal of its *Petition for Approval of a Tariff*

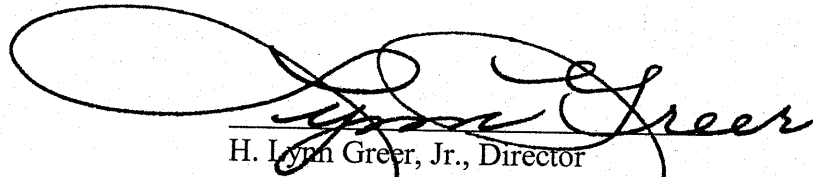
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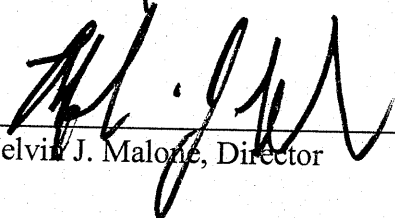
<sup>13</sup> *Withdrawal*, September 27, 2001, pp. 1-2.

<sup>14</sup> *Id.*, p. 2.

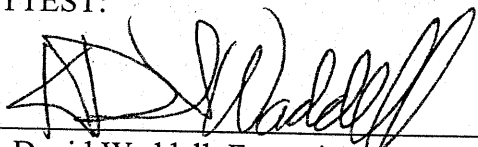
*Establishing Fixed Rate PGA Rider is accepted.*

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary